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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KATHARINE BARTLETT, BARRY BLISTEN,
PHILLIP COHEN, and RONALD VOSE,
individually and as representatives of the Class,

Plaintiffs,

v.

NORTH AMERICAN COMPANY FOR LIFE
AND HEALTH INSURANCE,

Defendant.

Case No.

(Monterey County Superior Court Case
No. 23CV002000)

**DEFENDANT NORTH AMERICAN
COMPANY FOR LIFE AND HEALTH
INSURANCE'S NOTICE OF
REMOVAL OF ACTION TO UNITED
STATES DISTRICT COURT UNDER
28 U.S.C. § 1453(b) (CLASS ACTION
FAIRNESS ACT)**

[Filed concurrently with Appendix of State
Court Pleadings, Certification of Conflicts
and Interested Entities or Persons,
Corporate Disclosure Statement, Civil
Cover Sheet and Certificate of Service]

Filing Date: August 14, 2023

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT**
2 **OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that Defendant North American Company for Life and Health
4 Insurance (“North American”) hereby removes the above-entitled action from the Superior Court of
5 the State of California for the County of Monterey (“State Court”), where the above-entitled action
6 (“Action”) was filed, to the United States District Court for the Northern District of California.

7 In support of this Notice, North American alleges as follows:

8 **TIMELINESS OF REMOVAL**

9 1. On June 26, 2023, Plaintiffs Katharine Bartlett, Barry Blisten, Phillip Cohen, and
10 Ronald Vose (collectively, “Plaintiffs”) commenced the Action in the State Court by filing a complaint
11 (“Complaint”) captioned *Katharine Bartlett, et al. v. North American Company for Life and Health*
12 *Insurance*, Monterey County Superior Court Case No. 23CV002000. The Complaint alleges one cause
13 of action: unfair and unlawful business practices in violation of California Bus. & Prof. Code § 17200,
14 *et seq.* A true and correct copy of the Complaint is attached as Exhibit B to the Appendix of State
15 Court Pleadings filed concurrently with this Notice of Removal.

16 2. Plaintiffs served North American with the Summons and Complaint by personal service
17 on July 17, 2023.

18 3. Therefore, this Notice of Removal, filed on August 15, 2023, is timely pursuant to 28
19 U.S.C. § 1446(b)(2).

20 4. Copies of all pleadings, process and orders served upon Midland in the State Court
21 proceeding are being filed with this notice as a separate Appendix.

22 **VENUE AND DIVISIONAL ASSIGNMENT**

23 5. Venue lies in the Northern District, San Jose Division, pursuant to 28 U.S.C.
24 §§ 1441(a), 1446(a), and 84(a). This Action was originally brought in the Superior Court of the State
25 of California, County of Monterey. *See* 28 U.S.C. § 84(a) (stating that the Northern District
26 encompasses Monterey County); Civil L. R. 3-2(e) (including Monterey County in San Jose Division).

THIS COURT HAS ORIGINAL JURISDICTION UNDER CAFA

6. The Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), “gives federal district courts original jurisdiction over class actions in which the class members number at least 100, at least one plaintiff is diverse in citizenship from any defendant, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1195 (9th Cir. 2015).

7. CAFA “significantly expanded federal jurisdiction in diversity class actions.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 398 (9th Cir. 2010); *see also Ibarra*, 775 F.3d at 1197 (“Congress intended CAFA to be interpreted expansively.”). “CAFA’s provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.” *Jauregui v. Roadrunner Transp. Servs.*, 28 F.4th 989, 993 (9th Cir. 2022) (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014)).

8. This Court has original jurisdiction over, and North American may remove, this Action because (i) it is a class action, (ii) in which the class members number at least 100, (iii) in which one or more class members are citizens of a state different from North American, and (iv) the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs.

A. THE REMOVED ACTION IS A “CLASS ACTION”

9. CAFA defines the term “class action” to include any civil action filed under a state “statute or rule of judicial procedure” that is “similar” to Federal Rule of Civil Procedure 23 which “authoriz[es] an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

10. Plaintiffs have brought this Action pursuant to California Code of Civil Procedure § 382, which authorizes a single plaintiff to “sue . . . for the benefit of all” “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” Accordingly, Section 382 of the California Code of Civil Procedure is “similar” to Federal Rule of Civil Procedure 23. 28 U.S.C. § 1332(d)(1)(B).

11. Plaintiffs have brought this Action on behalf of, and seek to represent, the following putative class:

All public employees of all California local school districts, community college districts, county offices of education, and state employees of a state employer under the uniform state payroll system, excluding the California State University System, eligible to participate in an annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986 that, in the four years predating the filing of this Complaint and continuing through the date the class list is prepared, who were invested in an indexed annuity 403(b) product issued by Defendant and who paid fees that were not properly disclosed on 403bcompare.com.

(Compl. ¶ 130.) Plaintiffs allege that this putative class satisfies the requirements of ascertainability, numerosity, commonality, typicality, adequacy, and predominance. (*Id.* ¶¶ 131–36.)

12. Based on the foregoing, plaintiffs have alleged a “class action” within the meaning of CAFA.

B. THE PUTATIVE CLASS EXCEEDS 100 CLASS MEMBERS

13. Under 28 U.S.C. § 1332(d)(5)(B), the number of members of all proposed plaintiff classes must equal or exceed 100 in the aggregate for the action to be removable under CAFA.

14. Plaintiffs allege that the proposed class includes “hundreds or thousands of class members.” (Compl. ¶¶ 130, 132.)

15. The putative class is thus sufficiently numerous under 28 U.S.C. § 1332(d)(5)(B).

B. THE PARTIES SATISFY THE MINIMAL DIVERSITY REQUIREMENT

16. CAFA’s minimal diversity requirement allows for federal district court jurisdiction where “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

17. Each of the named Plaintiffs is a citizen of California:

a. Plaintiff Katharine Bartlett. At the time of commencement of the Action and at the time of removal, Plaintiff Katharine Bartlett was a citizen of the State of California and resident in Santa Clara County, California. (Compl. ¶ 17.)

b. Barry Blisten. At the time of commencement of the Action and at the time of removal, Plaintiff Barry Blisten was a citizen of the State of California and resident in Los Angeles County, California. (Compl. ¶ 19.)

1 c. Plaintiff Phillip I. Cohen. At the time of commencement of the Action and at
 2 the time of removal, Plaintiff Phillip I. Cohen was a citizen of the State of California and resident in
 3 Los Angeles County, California. (Compl. ¶ 21.)

4 d. Plaintiff Ronald Vose. At the time of commencement of the Action and at the
 5 time of removal, Plaintiff Ronald Vose was a citizen of the State of California and resident in Riverside
 6 County, California. (Compl. ¶ 23.)

7 18. Under 28 U.S.C. § 1332(c)(1), a corporation is deemed a citizen of “any State by which
 8 it has been incorporated and of the State where it has its principal place of business.” At the time of
 9 commencement of the Action and at the time of removal, North American was, and still is, a
 10 corporation incorporated in and organized under the laws of the State of Iowa, with its principal place
 11 of business in West Des Moines, Iowa. (Compl. ¶ 26.)

12 19. Minimal diversity of citizenship exists between Plaintiffs and North American as
 13 required by CAFA because at least one named plaintiff is a citizen of a state different from North
 14 American. *See Ehrman v. Cox Commc’ns, Inc.*, 932 F.3d 1223, 1228 (9th Cir. 2019) (holding that the
 15 defendant’s “jurisdictional allegations, which provided a short and plain statement of the parties’
 16 citizenships based on information and belief, satisfied [the defendant’s] burden of pleading minimal
 17 diversity”).

18 **C. THE AMOUNT IN CONTROVERSY EXCEEDS \$5 MILLION**

19 20. North American denies Plaintiffs’ allegations and claim of entitlement to monetary or
 20 injunctive relief but without prejudice to its defenses in this Action avers that it is reasonably possible
 21 that the potential liability alleged by the Plaintiffs in this Action exceeds the \$5 million threshold for
 22 removal under CAFA.

23 21. “To meet CAFA’s amount-in-controversy requirement, a defendant needs to plausibly
 24 show that it is reasonably possible that the potential liability exceeds \$5 million.” *Greene v. Harley-*
 25 *Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir. 2020). “‘Amount at stake’ does not mean likely or
 26 probable liability; rather, it refers to possible liability.” *Id.* “[A] defendant’s notice of removal need
 27 include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.”
 28

1 *Dart Cherokee*, 574 U.S. at 89. North American’s “amount-in-controversy allegation should be
2 accepted when not contested by the plaintiff or questioned by the court.” *Id.* at 87.

3 22. The allegations of the Complaint state that the possible liability faced by North
4 American exceeds \$5 million. While the Complaint does not expressly identify an amount in
5 controversy, Plaintiffs allege that North American has “skimm[ed] *tens of millions of dollars*” from
6 California public employees’ supplemental retirement accounts. (Compl. ¶ 148 (emphasis added).)
7 Plaintiffs are seeking restitution of these allegedly undisclosed “fees” as well as injunctive relief to
8 require “Defendant to make full disclosures on 403bcompare.com of the fees associated with its
9 registered 403(b) products.” (*Id.* ¶¶ 153–54.) Given the foregoing, it is reasonable to assume that the
10 amount in controversy exceeds \$5 million.

11 23. Although North American disputes that Plaintiffs are entitled to any relief, monetary
12 or otherwise, North American’s records indicate the relief described by Plaintiffs in the Complaint, if
13 awarded, could exceed \$5,000,000, exclusive of costs and interest. The amount in controversy
14 therefore exceeds \$5,000,000.

15 24. A true and correct copy of this Notice of Removal has been served on Plaintiffs and
16 filed with the Clerk of the Superior Court of the State of California, County of Monterey, as required
17 by law. 28 U.S.C. § 1446(d).

18 Dated: August 14, 2023

Respectfully submitted,

20 By: /s/ Thomas A. Evans

21 Thomas A. Evans
22 Alston & Bird LLP

23 *Counsel for Defendant North American*
24 *Company for Life and Health Insurance*

PROOF OF SERVICE

I, Robert Chang, declare:

I am employed in the County of San Francisco. My business address is Alston & Bird LLP, 560 Mission Street, Suite 2100, San Francisco, CA 94105. I am over the age of eighteen years and not a party to the action in which this service is made.

On **August 14, 2023**, I served the document(s) described as follows **DEFENDANT NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE'S NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT UNDER 28 U.S.C. § 1453(b) (CLASS ACTION FAIRNESS ACT)** on the interested parties in this action:

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☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

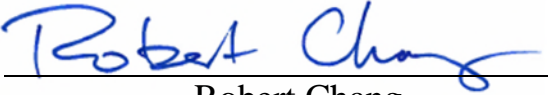
☒ BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the above service list

☐ By ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses through **Ace Attorney Service, Inc.** I did not receive, within a reasonable time after the transmission,

any electronic message or other indication that the transmission was unsuccessful.

☒ [Federal] I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct
[Federal] I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 14, 2023, at San Francisco, California.


Robert Chang